

131 Views | 0 CrossRef citations to date | 1 Altmetric


Articles

Are EU dawn raid procedures on a collision course with the ECHR? Does a cautionary tale from Canada offer guidance?*

Gavin Murphy

Pages 471-484 | Published online: 06 Feb 2017

“Cite this article” <https://doi.org/10.1080/03050718.2017.1284011>

 Check for updates

Sample our
Law
Journals
>> [Sign in here](#) to start your access
to the latest two volumes for 14 days

 Full Article

 Figures & data

 Citations

 Metrics

 Reprints & Permissions

Read this article

We Care About Your Privacy

We and our 843 partners store and/or access information on a device, such as unique IDs in cookies to process personal data. You may accept or manage your choices by clicking below, including your right to object where legitimate interest is used, or at any time in the privacy policy page. These choices will be signaled to our partners and will not affect browsing data. [Privacy Policy](#)

We and our partners process data to provide:

Use precise geolocation data. Actively scan device characteristics for identification. Store and/or access information on a device. Personalised advertising and content, advertising and content measurement, audience research and services development.

[List of Partners \(vendors\)](#)

I Accept

Essential Only

Show Purposes



Are EU dawn raid procedures on a collision course with the ECHR? Does a cautionary tale from Canada offer guidance?*

Gavin Murphy

Barrister and Solicitor, Ottawa, Canada

Introduction

There is a striking contrast between Canada and the European Union (EU) with respect to the authorities' ability to search computers and mobile phones – and this contrast invites exploration, comparison, review and comment. Specific and prior authorisation to search computers and mobile phones¹ is required in Canadian law except for searches incident to arrest in narrowly defined instances.² This position differs dramatically with sweeping inspections of data in EU competition law investigations where no specific authorisation is needed to search electronic devices in the course of a dawn raid.³

This paper compares the law in Canada regarding searches of electronic data where the Supreme Court of Canada (SCC) ruled in 2013 that specific and prior authorisation is required to search a computer (including mobile phones). The law was refined by the SCC in 2014 to allow for warrantless searches of mobile phones incident to arrest provided specific safeguards are adopted. The law in Canada is polar opposite to EU law⁴ where no expectation of computer privacy and no specific authorisation are afforded for inspections of electronic devices

*The views expressed in this article are strictly those of the author and no way necessarily reflect the policies or opinions of anyone else. He thanks his friends and colleagues Shane Zurbrigg and Sally Arsove for their helpful comments on an earlier draft. This article was completed in November 2016.

¹Referred to in Canada as cellular phones or cell phones.

²Or warrantless searches in exigent circumstances, for example, to prevent an imminent threat to safety.

³A dawn raid is an unannounced inspection of premises carried out by the European Commission in accordance with Article 105 of the Treaty on the Functioning of the European Union (TFEU). Officials will normally be aided by representatives from the national competition authority.

⁴This is not the only instance where Canadian and EU law differ. In Canada, in-house counsel and their client benefit from solicitor-client privilege (referred to as legal professional privilege in the EU), whereas in-house legal advisers and their client do not benefit from similar protections in the EU. See in this regard, Gavin Murphy, 'Is It Time to Rebrand Legal Professional Privilege In EC Competition Law? An Updated Look' (2009) 35 CLB 443.

Notes

* The views expressed in this article are strictly those of the author and no way necessarily reflect the policies or opinions of anyone else. He thanks his friends and colleagues Shane Zurbrigg and Sally Arsove for their helpful comments on an earlier draft. This article was completed in November 2016.

¹ Referred

² Or war

³ A dawn

acco

normal

⁴ This is

benefit f

legal adv

We Care About Your Privacy

We and our 843 partners store and/or access information on a device, such as unique IDs in cookies to process personal data. You may accept or manage your choices by clicking below, including your right to object where legitimate interest is used, or at any time in the privacy policy page. These choices will be signaled to our partners and will not affect browsing data. [Privacy Policy](#)

We and our partners process data to provide:

Use precise geolocation data. Actively scan device characteristics for identification. Store and/or access information on a device. Personalised advertising and content, advertising and content measurement, audience research and services development.

[List of Partners \(vendors\)](#)

I Accept

Essential Only

Show Purposes

Murphy, 'Is It Time to Rebrand Legal Professional Privilege In EC Competition Law? An Updated Look' (2009) 35 CLB 443.

⁵ The Commission is the executive branch of the EU and one of its responsibilities is developing rules and regulations regarding competition policy and enforcing those provisions.

⁶ Formally known as the European Convention for the Protection of Human Rights and Fundamental Freedoms.

⁷ Query: In light of the Court of Justice of the European Union (CJEU) Opinion 2/13 of 18 December 2014, should this question be recast as an 'if'? See below.

⁸ R v Vu, 2013 SCC 60, [2013] 3 SCR 657 <<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13327/index.do>> accessed 21 October 2016.

⁹ Competition Act, RSC 1985, c C-34, as amended.

¹⁰ For further details on the Vu case, see Gavin Murphy, 'Supreme Court of Canada establishes that specific authorisation is needed for computer searches in Canada – will the European Union follow suit?' [2014] ECLR 322; Gavin Murphy, 'The Canadian Supreme Court Rules That Specific Authorisation Needed to Search Computers and Mobile Phones', e-competitions, No 62303, January 2014 <<https://www.concurrences.com/bulletin/news-issues/November-2013/Th-Supreme-Court-of-Canada?lang=en>> accessed 22 October 2016.

¹¹ Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

¹² Justice Cromwell noted at para 38 of the judgment that mobile phones are similar in function and storage capacity to computers and that the term 'computer' in the judgment should be understood to cover these devices. See also s 31.8 of the Canada Evidence Act RSC 1985 c C-5 for a definition of 'computer system'.

¹³ According to Justice Cromwell at para 41 of the judgment, the SCC was advised that as of April 2009 the highest capacity commercial hard drives could store two terabytes of data. One terabyte can hold about 1,000,000 books of 500 pages each, 1000 h of video or 250,000 songs of four minutes. An 80 gigabyte desktop drive can store the equivalent of 40,000,000 pages of text. Hard drive sizes have increased since 2009 and two terabyte drives are now readily and cheaply available commercially. Larger drives are also available, but they are more expensive.

¹⁴ Vu at paras 40, 45 and 47.

¹⁵ Vu at

¹⁶ Query prejudicial to be reasonably necessary

¹⁷ Section 1 of the Charter of Rights and Freedoms, which states that the rights and freedoms set out in it shall be guaranteed to all persons within the jurisdiction of the government of Canada, subject only to such limits as are justified in a free and democratic society.

We Care About Your Privacy

We and our 843 partners store and/or access information on a device, such as unique IDs in cookies to process personal data. You may accept or manage your choices by clicking below, including your right to object where legitimate interest is used, or at any time in the privacy policy page. These choices will be signaled to our partners and will not affect browsing data. [Privacy Policy](#)

We and our partners process data to provide:

Use precise geolocation data. Actively scan device characteristics for identification. Store and/or access information on a device. Personalised advertising and content, advertising and content measurement, audience research and services development.

[List of Partners \(vendors\)](#)

I Accept

Essential Only

Show Purposes

¹⁹ A voir dire in this case would have been a trial within the main trial held separately to determine the admissibility of contested evidence.

²⁰ Fearon at paras 3 and 4.

²¹ These valid law enforcement objectives include protecting the police, the accused and the public, preserving evidence and discovering evidence such as locating additional suspects, where the investigation could be stymied or significantly hampered without the power to search the mobile incident to arrest.

²² These three approaches are a categorical prohibition, a reasonable and probable grounds requirement and limiting searches to exigent circumstances.

²³ See n 21 above.

²⁴ Query: Vu involves the search of computers at a private residence. Can it be distinguished from computer searches of business premises? The overwhelming majority of searches in Canadian competition law take place at business premises.

²⁵ Unlike specific reference to tablets and the cloud in the EU. See below.

²⁶ The situation is even more restricted in the USA. In Riley v California 134 S Ct 2473 (2014), the US Supreme Court unanimously held that a warrantless search and seizure of electronic data on a mobile phone incident to arrest was unconstitutional. This case was referred to in the Fearon decision.

²⁷ The key criminal law offences being conspiracy and bid-rigging. Obstructing a validly authorised search could also result in criminal charges. See s 64 of the Act.

²⁸ Fearon at para 79.

²⁹ A justice of the peace (not a judge) authorises search warrants under the Act.

³⁰ 'The Bureau has on staff trained electronic evidence officers. They have specialized knowledge and skills which allow them to access computer systems to search for, examine, retrieve, reproduce and seize electronic data. They adhere to accepted forensic practices and procedures designed to ensure the integrity of the evidentiary process for obtaining and maintaining electronic records, and the integrity of electronic media from which they are sourced, while attempting to minimize the impact on business functions.' Competition Bureau, 'Information Bulletin on Sections 15 and 16 of the Competition Act' at p 14, 25 April 2008

<<http://www.competitionbureau.gc.ca/pdf-csv/Section-1516-final-e.pdf>>

³¹ G Pins & Co v The Queen, [2013] 1 SCR 3, 2013 FC 281, 2013 FC 282, 2013 FC 283, 2013 FC 284, 2013 FC 285, 2013 FC 286, 2013 FC 287, 2013 FC 288, 2013 FC 289, 2013 FC 290, 2013 FC 291, 2013 FC 292, 2013 FC 293, 2013 FC 294, 2013 FC 295, 2013 FC 296, 2013 FC 297, 2013 FC 298, 2013 FC 299, 2013 FC 300, 2013 FC 301, 2013 FC 302, 2013 FC 303, 2013 FC 304, 2013 FC 305, 2013 FC 306, 2013 FC 307, 2013 FC 308, 2013 FC 309, 2013 FC 310, 2013 FC 311, 2013 FC 312, 2013 FC 313, 2013 FC 314, 2013 FC 315, 2013 FC 316, 2013 FC 317, 2013 FC 318, 2013 FC 319, 2013 FC 320, 2013 FC 321, 2013 FC 322, 2013 FC 323, 2013 FC 324, 2013 FC 325, 2013 FC 326, 2013 FC 327, 2013 FC 328, 2013 FC 329, 2013 FC 330, 2013 FC 331, 2013 FC 332, 2013 FC 333, 2013 FC 334, 2013 FC 335, 2013 FC 336, 2013 FC 337, 2013 FC 338, 2013 FC 339, 2013 FC 340, 2013 FC 341, 2013 FC 342, 2013 FC 343, 2013 FC 344, 2013 FC 345, 2013 FC 346, 2013 FC 347, 2013 FC 348, 2013 FC 349, 2013 FC 350, 2013 FC 351, 2013 FC 352, 2013 FC 353, 2013 FC 354, 2013 FC 355, 2013 FC 356, 2013 FC 357, 2013 FC 358, 2013 FC 359, 2013 FC 360, 2013 FC 361, 2013 FC 362, 2013 FC 363, 2013 FC 364, 2013 FC 365, 2013 FC 366, 2013 FC 367, 2013 FC 368, 2013 FC 369, 2013 FC 370, 2013 FC 371, 2013 FC 372, 2013 FC 373, 2013 FC 374, 2013 FC 375, 2013 FC 376, 2013 FC 377, 2013 FC 378, 2013 FC 379, 2013 FC 380, 2013 FC 381, 2013 FC 382, 2013 FC 383, 2013 FC 384, 2013 FC 385, 2013 FC 386, 2013 FC 387, 2013 FC 388, 2013 FC 389, 2013 FC 390, 2013 FC 391, 2013 FC 392, 2013 FC 393, 2013 FC 394, 2013 FC 395, 2013 FC 396, 2013 FC 397, 2013 FC 398, 2013 FC 399, 2013 FC 400, 2013 FC 401, 2013 FC 402, 2013 FC 403, 2013 FC 404, 2013 FC 405, 2013 FC 406, 2013 FC 407, 2013 FC 408, 2013 FC 409, 2013 FC 410, 2013 FC 411, 2013 FC 412, 2013 FC 413, 2013 FC 414, 2013 FC 415, 2013 FC 416, 2013 FC 417, 2013 FC 418, 2013 FC 419, 2013 FC 420, 2013 FC 421, 2013 FC 422, 2013 FC 423, 2013 FC 424, 2013 FC 425, 2013 FC 426, 2013 FC 427, 2013 FC 428, 2013 FC 429, 2013 FC 430, 2013 FC 431, 2013 FC 432, 2013 FC 433, 2013 FC 434, 2013 FC 435, 2013 FC 436, 2013 FC 437, 2013 FC 438, 2013 FC 439, 2013 FC 440, 2013 FC 441, 2013 FC 442, 2013 FC 443, 2013 FC 444, 2013 FC 445, 2013 FC 446, 2013 FC 447, 2013 FC 448, 2013 FC 449, 2013 FC 450, 2013 FC 451, 2013 FC 452, 2013 FC 453, 2013 FC 454, 2013 FC 455, 2013 FC 456, 2013 FC 457, 2013 FC 458, 2013 FC 459, 2013 FC 460, 2013 FC 461, 2013 FC 462, 2013 FC 463, 2013 FC 464, 2013 FC 465, 2013 FC 466, 2013 FC 467, 2013 FC 468, 2013 FC 469, 2013 FC 470, 2013 FC 471, 2013 FC 472, 2013 FC 473, 2013 FC 474, 2013 FC 475, 2013 FC 476, 2013 FC 477, 2013 FC 478, 2013 FC 479, 2013 FC 480, 2013 FC 481, 2013 FC 482, 2013 FC 483, 2013 FC 484, 2013 FC 485, 2013 FC 486, 2013 FC 487, 2013 FC 488, 2013 FC 489, 2013 FC 490, 2013 FC 491, 2013 FC 492, 2013 FC 493, 2013 FC 494, 2013 FC 495, 2013 FC 496, 2013 FC 497, 2013 FC 498, 2013 FC 499, 2013 FC 500, 2013 FC 501, 2013 FC 502, 2013 FC 503, 2013 FC 504, 2013 FC 505, 2013 FC 506, 2013 FC 507, 2013 FC 508, 2013 FC 509, 2013 FC 510, 2013 FC 511, 2013 FC 512, 2013 FC 513, 2013 FC 514, 2013 FC 515, 2013 FC 516, 2013 FC 517, 2013 FC 518, 2013 FC 519, 2013 FC 520, 2013 FC 521, 2013 FC 522, 2013 FC 523, 2013 FC 524, 2013 FC 525, 2013 FC 526, 2013 FC 527, 2013 FC 528, 2013 FC 529, 2013 FC 530, 2013 FC 531, 2013 FC 532, 2013 FC 533, 2013 FC 534, 2013 FC 535, 2013 FC 536, 2013 FC 537, 2013 FC 538, 2013 FC 539, 2013 FC 540, 2013 FC 541, 2013 FC 542, 2013 FC 543, 2013 FC 544, 2013 FC 545, 2013 FC 546, 2013 FC 547, 2013 FC 548, 2013 FC 549, 2013 FC 550, 2013 FC 551, 2013 FC 552, 2013 FC 553, 2013 FC 554, 2013 FC 555, 2013 FC 556, 2013 FC 557, 2013 FC 558, 2013 FC 559, 2013 FC 560, 2013 FC 561, 2013 FC 562, 2013 FC 563, 2013 FC 564, 2013 FC 565, 2013 FC 566, 2013 FC 567, 2013 FC 568, 2013 FC 569, 2013 FC 570, 2013 FC 571, 2013 FC 572, 2013 FC 573, 2013 FC 574, 2013 FC 575, 2013 FC 576, 2013 FC 577, 2013 FC 578, 2013 FC 579, 2013 FC 580, 2013 FC 581, 2013 FC 582, 2013 FC 583, 2013 FC 584, 2013 FC 585, 2013 FC 586, 2013 FC 587, 2013 FC 588, 2013 FC 589, 2013 FC 590, 2013 FC 591, 2013 FC 592, 2013 FC 593, 2013 FC 594, 2013 FC 595, 2013 FC 596, 2013 FC 597, 2013 FC 598, 2013 FC 599, 2013 FC 600, 2013 FC 601, 2013 FC 602, 2013 FC 603, 2013 FC 604, 2013 FC 605, 2013 FC 606, 2013 FC 607, 2013 FC 608, 2013 FC 609, 2013 FC 610, 2013 FC 611, 2013 FC 612, 2013 FC 613, 2013 FC 614, 2013 FC 615, 2013 FC 616, 2013 FC 617, 2013 FC 618, 2013 FC 619, 2013 FC 620, 2013 FC 621, 2013 FC 622, 2013 FC 623, 2013 FC 624, 2013 FC 625, 2013 FC 626, 2013 FC 627, 2013 FC 628, 2013 FC 629, 2013 FC 630, 2013 FC 631, 2013 FC 632, 2013 FC 633, 2013 FC 634, 2013 FC 635, 2013 FC 636, 2013 FC 637, 2013 FC 638, 2013 FC 639, 2013 FC 640, 2013 FC 641, 2013 FC 642, 2013 FC 643, 2013 FC 644, 2013 FC 645, 2013 FC 646, 2013 FC 647, 2013 FC 648, 2013 FC 649, 2013 FC 650, 2013 FC 651, 2013 FC 652, 2013 FC 653, 2013 FC 654, 2013 FC 655, 2013 FC 656, 2013 FC 657, 2013 FC 658, 2013 FC 659, 2013 FC 660, 2013 FC 661, 2013 FC 662, 2013 FC 663, 2013 FC 664, 2013 FC 665, 2013 FC 666, 2013 FC 667, 2013 FC 668, 2013 FC 669, 2013 FC 670, 2013 FC 671, 2013 FC 672, 2013 FC 673, 2013 FC 674, 2013 FC 675, 2013 FC 676, 2013 FC 677, 2013 FC 678, 2013 FC 679, 2013 FC 680, 2013 FC 681, 2013 FC 682, 2013 FC 683, 2013 FC 684, 2013 FC 685, 2013 FC 686, 2013 FC 687, 2013 FC 688, 2013 FC 689, 2013 FC 690, 2013 FC 691, 2013 FC 692, 2013 FC 693, 2013 FC 694, 2013 FC 695, 2013 FC 696, 2013 FC 697, 2013 FC 698, 2013 FC 699, 2013 FC 700, 2013 FC 701, 2013 FC 702, 2013 FC 703, 2013 FC 704, 2013 FC 705, 2013 FC 706, 2013 FC 707, 2013 FC 708, 2013 FC 709, 2013 FC 710, 2013 FC 711, 2013 FC 712, 2013 FC 713, 2013 FC 714, 2013 FC 715, 2013 FC 716, 2013 FC 717, 2013 FC 718, 2013 FC 719, 2013 FC 720, 2013 FC 721, 2013 FC 722, 2013 FC 723, 2013 FC 724, 2013 FC 725, 2013 FC 726, 2013 FC 727, 2013 FC 728, 2013 FC 729, 2013 FC 730, 2013 FC 731, 2013 FC 732, 2013 FC 733, 2013 FC 734, 2013 FC 735, 2013 FC 736, 2013 FC 737, 2013 FC 738, 2013 FC 739, 2013 FC 740, 2013 FC 741, 2013 FC 742, 2013 FC 743, 2013 FC 744, 2013 FC 745, 2013 FC 746, 2013 FC 747, 2013 FC 748, 2013 FC 749, 2013 FC 750, 2013 FC 751, 2013 FC 752, 2013 FC 753, 2013 FC 754, 2013 FC 755, 2013 FC 756, 2013 FC 757, 2013 FC 758, 2013 FC 759, 2013 FC 760, 2013 FC 761, 2013 FC 762, 2013 FC 763, 2013 FC 764, 2013 FC 765, 2013 FC 766, 2013 FC 767, 2013 FC 768, 2013 FC 769, 2013 FC 770, 2013 FC 771, 2013 FC 772, 2013 FC 773, 2013 FC 774, 2013 FC 775, 2013 FC 776, 2013 FC 777, 2013 FC 778, 2013 FC 779, 2013 FC 780, 2013 FC 781, 2013 FC 782, 2013 FC 783, 2013 FC 784, 2013 FC 785, 2013 FC 786, 2013 FC 787, 2013 FC 788, 2013 FC 789, 2013 FC 790, 2013 FC 791, 2013 FC 792, 2013 FC 793, 2013 FC 794, 2013 FC 795, 2013 FC 796, 2013 FC 797, 2013 FC 798, 2013 FC 799, 2013 FC 800, 2013 FC 801, 2013 FC 802, 2013 FC 803, 2013 FC 804, 2013 FC 805, 2013 FC 806, 2013 FC 807, 2013 FC 808, 2013 FC 809, 2013 FC 810, 2013 FC 811, 2013 FC 812, 2013 FC 813, 2013 FC 814, 2013 FC 815, 2013 FC 816, 2013 FC 817, 2013 FC 818, 2013 FC 819, 2013 FC 820, 2013 FC 821, 2013 FC 822, 2013 FC 823, 2013 FC 824, 2013 FC 825, 2013 FC 826, 2013 FC 827, 2013 FC 828, 2013 FC 829, 2013 FC 830, 2013 FC 831, 2013 FC 832, 2013 FC 833, 2013 FC 834, 2013 FC 835, 2013 FC 836, 2013 FC 837, 2013 FC 838, 2013 FC 839, 2013 FC 840, 2013 FC 841, 2013 FC 842, 2013 FC 843, 2013 FC 844, 2013 FC 845, 2013 FC 846, 2013 FC 847, 2013 FC 848, 2013 FC 849, 2013 FC 850, 2013 FC 851, 2013 FC 852, 2013 FC 853, 2013 FC 854, 2013 FC 855, 2013 FC 856, 2013 FC 857, 2013 FC 858, 2013 FC 859, 2013 FC 860, 2013 FC 861, 2013 FC 862, 2013 FC 863, 2013 FC 864, 2013 FC 865, 2013 FC 866, 2013 FC 867, 2013 FC 868, 2013 FC 869, 2013 FC 870, 2013 FC 871, 2013 FC 872, 2013 FC 873, 2013 FC 874, 2013 FC 875, 2013 FC 876, 2013 FC 877, 2013 FC 878, 2013 FC 879, 2013 FC 880, 2013 FC 881, 2013 FC 882, 2013 FC 883, 2013 FC 884, 2013 FC 885, 2013 FC 886, 2013 FC 887, 2013 FC 888, 2013 FC 889, 2013 FC 890, 2013 FC 891, 2013 FC 892, 2013 FC 893, 2013 FC 894, 2013 FC 895, 2013 FC 896, 2013 FC 897, 2013 FC 898, 2013 FC 899, 2013 FC 900, 2013 FC 901, 2013 FC 902, 2013 FC 903, 2013 FC 904, 2013 FC 905, 2013 FC 906, 2013 FC 907, 2013 FC 908, 2013 FC 909, 2013 FC 910, 2013 FC 911, 2013 FC 912, 2013 FC 913, 2013 FC 914, 2013 FC 915, 2013 FC 916, 2013 FC 917, 2013 FC 918, 2013 FC 919, 2013 FC 920, 2013 FC 921, 2013 FC 922, 2013 FC 923, 2013 FC 924, 2013 FC 925, 2013 FC 926, 2013 FC 927, 2013 FC 928, 2013 FC 929, 2013 FC 930, 2013 FC 931, 2013 FC 932, 2013 FC 933, 2013 FC 934, 2013 FC 935, 2013 FC 936, 2013 FC 937, 2013 FC 938, 2013 FC 939, 2013 FC 940, 2013 FC 941, 2013 FC 942, 2013 FC 943, 2013 FC 944, 2013 FC 945, 2013 FC 946, 2013 FC 947, 2013 FC 948, 2013 FC 949, 2013 FC 950, 2013 FC 951, 2013 FC 952, 2013 FC 953, 2013 FC 954, 2013 FC 955, 2013 FC 956, 2013 FC 957, 2013 FC 958, 2013 FC 959, 2013 FC 960, 2013 FC 961, 2013 FC 962, 2013 FC 963, 2013 FC 964, 2013 FC 965, 2013 FC 966, 2013 FC 967, 2013 FC 968, 2013 FC 969, 2013 FC 970, 2013 FC 971, 2013 FC 972, 2013 FC 973, 2013 FC 974, 2013 FC 975, 2013 FC 976, 2013 FC 977, 2013 FC 978, 2013 FC 979, 2013 FC 980, 2013 FC 981, 2013 FC 982, 2013 FC 983, 2013 FC 984, 2013 FC 985, 2013 FC 986, 2013 FC 987, 2013 FC 988, 2013 FC 989, 2013 FC 990, 2013 FC 991, 2013 FC 992, 2013 FC 993, 2013 FC 994, 2013 FC 995, 2013 FC 996, 2013 FC 997, 2013 FC 998, 2013 FC 999, 2013 FC 1000.

³¹ G Pins & Co v The Queen, [2013] 1 SCR 3, 2013 FC 281, 2013 FC 282, 2013 FC 283, 2013 FC 284, 2013 FC 285, 2013 FC 286, 2013 FC 287, 2013 FC 288, 2013 FC 289, 2013 FC 290, 2013 FC 291, 2013 FC 292, 2013 FC 293, 2013 FC 294, 2013 FC 295, 2013 FC 296, 2013 FC 297, 2013 FC 298, 2013 FC 299, 2013 FC 300, 2013 FC 301, 2013 FC 302, 2013 FC 303, 2013 FC 304, 2013 FC 305, 2013 FC 306, 2013 FC 307, 2013 FC 308, 2013 FC 309, 2013 FC 310, 2013 FC 311, 2013 FC 312, 2013 FC 313, 2013 FC 314, 2013 FC 315, 2013 FC 316, 2013 FC 317, 2013 FC 318, 2013 FC 319, 2013 FC 320, 2013 FC 321, 2013 FC 322, 2013 FC 323, 2013 FC 324, 2013 FC 325, 2013 FC 326, 2013 FC 327, 2013 FC 328, 2013 FC 329, 2013 FC 330, 2013 FC 331, 2013 FC 332, 2013 FC 333, 2013 FC 334, 2013 FC 335, 2013 FC 336, 2013 FC 337, 2013 FC 338, 2013 FC 339, 2013 FC 340, 2013 FC 341, 2013 FC 342, 2013 FC 343, 2013 FC 344, 2013 FC 345, 2013 FC 346, 2013 FC 347, 2013 FC 348, 2013 FC 349, 2013 FC 350, 2013 FC 351, 2013 FC 352, 2013 FC 353, 2013 FC 354, 2013 FC 355, 2013 FC 356, 2013 FC 357, 2013 FC 358, 2013 FC 359, 2013 FC 360, 2013 FC 361, 2013 FC 362, 2013 FC 363, 2013 FC 364, 2013 FC 365, 2013 FC 366, 2013 FC 367, 2013 FC 368, 2013 FC 369, 2013 FC 370, 2013 FC 371, 2013 FC 372, 2013 FC 373, 2013 FC 374, 2013 FC 375, 2013 FC 376, 2013 FC 377, 2013 FC 378, 2013 FC 379, 2013 FC 380, 2013 FC 381, 2013 FC 382, 2013 FC 383, 2013 FC 384, 2013 FC 385, 2013 FC 386, 2013 FC 387, 2013 FC 388, 2013 FC 389, 2013 FC 390, 2013 FC 391, 2013 FC 392, 2013 FC 393, 2013 FC 394, 2013 FC 395, 2013 FC 396, 2013 FC 397, 2013 FC 398, 2013 FC 399, 2013 FC 400, 2013 FC 401, 2013 FC 402, 2013 FC 403, 2013 FC 404, 2013 FC 405, 2013 FC 406, 2013 FC 407, 2013 FC 408, 2013 FC 409, 2013 FC 410, 2013 FC 411, 2013 FC 412, 2013 FC 413, 2013 FC 414, 2013 FC 415, 2013 FC 416, 2013 FC 417, 2013 FC 418, 2013 FC 419, 2013 FC 420, 2013 FC 421, 2013 FC 422, 2013 FC 423, 2013 FC 424, 2013 FC 425, 2013 FC 426, 2013 FC 427, 2013 FC 428, 2013 FC 429, 2013 FC 430, 2013 FC 431, 2013 FC 432, 2013 FC 433, 2013 FC 434, 2013 FC 435, 2013 FC 436, 2013 FC 437, 2013 FC 438, 2013 FC 439, 2013 FC 440, 2013 FC 441, 2013 FC 442, 2013 FC 443, 2013 FC 444, 2013 FC 445, 2013 FC 446, 2013 FC 447, 2013 FC 448, 2013 FC 449, 2013 FC 450, 2013 FC 451, 2013 FC 452, 2013 FC 453, 2013 FC 454, 2013 FC 455, 2013 FC 456, 2013 FC 457, 2013 FC 458, 2013 FC 459, 2013 FC 460, 2013 FC 461, 2013 FC 462, 2013 FC 463, 2013 FC 464, 2013 FC 465, 2013 FC 466, 2013 FC 467, 2013 FC 468, 2013 FC 469, 2013 FC 470, 2013 FC 471, 2013 FC 472, 2013 FC 473, 2013 FC 474, 2013 FC 475, 2013 FC 476, 2013 FC 477, 2013 FC 478, 2013 FC 479, 2013 FC 480, 2013 FC 481, 2013 FC 482, 2013 FC 483, 2013 FC 484, 2013 FC 485, 2013 FC 486, 2013 FC 487, 2013 FC 488, 2013 FC 489, 2013 FC 490, 2013 FC 491, 2013 FC 492, 2013 FC 493, 2013 FC 494, 2013 FC 495, 2013 FC 496, 2013 FC 497, 2013 FC 498, 2013 FC 499, 2013 FC 500, 2013 FC 501, 2013 FC 502, 2013 FC 503, 2013 FC 504, 2013 FC 505, 2013 FC 506, 2013 FC 507, 2013 FC 508, 2013 FC 509, 2013 FC 510, 2013 FC 511, 2013 FC 512, 2013 FC 513, 2013 FC 514, 2013 FC 515, 2013 FC 516, 2013 FC 517, 2013 FC 518, 2013 FC 519, 2013 FC 520, 2013 FC 521, 2013 FC 522, 2013 FC 523, 2013 FC 524, 2013 FC 525, 2013 FC 526, 2013 FC 527, 2013 FC 528, 2013 FC 529, 2013 FC 530, 2013 FC 531, 2013 FC 532, 2013 FC 533, 2013 FC 534, 2013 FC 535, 2013 FC 536, 2013 FC 537, 2013 FC 538, 2013 FC 539, 2013 FC 540, 2013 FC 541, 2013 FC 542, 2013 FC 543, 2013 FC 544, 2013 FC 545, 2013 FC 546, 2013 FC 547, 2013 FC 548, 2013 FC 549, 2013 FC 550, 2013 FC 551, 2013 FC 552, 2013 FC 553, 2013 FC 554, 2013 FC 555, 2013 FC 556, 2013 FC 557, 2013 FC 558, 2013 FC 559, 2013 FC 560, 2013 FC 561, 2013 FC 562, 2013 FC 563, 2013 FC 564, 2013 FC 565, 2013 FC 566, 2013 FC 567, 2013 FC 568, 2013 FC 569, 2013 FC 570, 2013 FC 571, 2013 FC 572, 2013 FC 573, 2013 FC 574, 2013 FC 575, 2013 FC 576, 2013 FC 577,

Business executives should therefore be prepared that they may have to hand over to the inspectors their blackberry and /or smartphone during an inspection. They may be requested for passwords for these items and a forensic copy of the data on these devices may be made. They should be prepared to manage their work schedule without these devices for several hours, and at worst until the end of the raid (which may last as long as three days).’ Peter Citron (ed), ‘European Commission dawn raids – IT searches,’ Kluwer Competition Blog, 25 March 2013 <<http://kluwercompetitionlawblog.com/2013/03/25/european-commission-dawn-raids-it-searches/>> accessed 22 October 2016. (Providing personal devices to inspectors is now mandated. See below.).

³⁴ Article 20(4) says: ‘Undertakings and associations of undertakings are required to submit to inspections ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the penalties provided for in Articles 23 and 24 and the right to have the decision reviewed by the Court of Justice. The Commission shall take such decisions after consulting the competition authority of the Member State in whose territory the inspection is to be conducted.’

Council Regulation (EC) No 1/2003, Official Journal of the European Communities L, pp 1-25, 4 January 2003 <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003R0001&from=en>> accessed 22 October 2016.

³⁵ Article 20(2) says: ‘The officials and other accompanying persons authorised by the Commission to conduct an inspection are empowered: (a) to enter any premises, land and means of transport of undertakings and associations of undertakings; (b) to examine the books and other records related to the business, irrespective of the medium on which they are stored; (c) to take or obtain in any form copies of or extracts from such books or records; (d) to seal any business premises and books or records for the period and to the extent necessary for the inspection; (e) to ask any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers.’

³⁶ European Commission, ‘Explanatory note on Commission inspections pursuant to Article 20(4) of Council Regulation No 1/2003’, 11 September 2015 <http://ec.europa.eu/competition/antitrust/legislation/explanatory_note.pdf> accessed 22 October 2016.

³⁷ 2015 Commission explanatory note at paras 9-11.

³⁸ Notwithstanding the principle of proportionality in EU law.

³⁹ It is not necessary to think that business data would not be commingled with personal information on private devices meaningfully.

⁴⁰ Under the GDPR, data controllers must identify privileged information and ensure it is not processed.

⁴¹ Not all data is automatically considered privileged.

⁴² Robat

<<http://kluwercompetitionlawblog.com/2013/03/25/european-commission-dawn-raids-it-searches/>>

We Care About Your Privacy

We and our 843 partners store and/or access information on a device, such as unique IDs in cookies to process personal data. You may accept or manage your choices by clicking below, including your right to object where legitimate interest is used, or at any time in the privacy policy page. These choices will be signaled to our partners and will not affect browsing data. [Privacy Policy](#)

We and our partners process data to provide:

Use precise geolocation data. Actively scan device characteristics for identification. Store and/or access information on a device. Personalised advertising and content, advertising and content measurement, audience research and services development.

[List of Partners \(vendors\)](#)

I Accept

Essential Only

Show Purposes

M Michalek, 'Fishing Expeditions and Subsequent Electronic Searches in the Light of the Principle of Proportionality of Inspections in Competition Law Cases in Europe,' Yearbook of Antitrust and Regulatory Studies, vol 2014, 7(10) 129 at 157 <http://www.yars.wz.uw.edu.pl/yars2014_7_10/129.pdf> accessed 22 October 2016. See Case C-583/13 P Deutsche Bahn AG v Commission, 18 June 2015, confirming that the Commission must restrict a dawn raid to matters covered in an inspection decision, i.e. it cannot go on a fishing expedition <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=165109&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=231192>> accessed 24 October 2016. Query: How would this finding play out in instances where the Commission removed a copy of a hard drive to its premises for a later examination?

⁴⁴ The Maastricht Treaty in Title 1 Common Provisions Article F 2 says: 'The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.' Official Journal of the European Communities, 92/C 191, pp 1-112, 29 July 1992 <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1992:191:FULL&from=EN>> accessed 24 October 2016.

⁴⁵ Article 6.2-6.3 of the Treaty on European Union says: '2. The [European] Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties. 3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.'

⁴⁶ If not already with the Charter of Fundamental Rights of the European Union and in particular the personal freedoms (Respect for private and family life) found in Article 7. This Charter was made binding on EU institutions and Member States by the Treaty of Lisbon when acting within the scope of EU law. See also Article 52(3), which says: 'In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.' The EU is currently in the odd position of having overlapping jurisdiction with respect to human rights with two texts, the Charter of Fundamental Rights of the European Union and the ECHR, and two corresponding courts, namely the CJEU and the ECtHR. For an excellent discussion on the tension between the CJEU and the ECtHR and the application of the Charter of Fundamental Rights of the European Union, see G de Búrca, 'After the EU Charter of Fundamental Rights: The Court of Justice as a Human Rights Adjudicator?', (2013) 20 MJ 2 168

<<http://www.eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1992:191:FULL&from=EN>> accessed 24 October 2016.

⁴⁷ See N. M. Michalek, 'Fishing Expeditions and Subsequent Electronic Searches in the Light of the Principle of Proportionality of Inspections in Competition Law Cases in Europe,' Yearbook of Antitrust and Regulatory Studies, vol 2014, 7(10) 129 at 157 <http://www.yars.wz.uw.edu.pl/yars2014_7_10/129.pdf> accessed 22 October 2016.

⁴⁸ On the European Union's competence to regulate competition law, see the Commission's decision in the European Union v. Commission, 18 June 2015, confirming that the Commission must restrict a dawn raid to matters covered in an inspection decision, i.e. it cannot go on a fishing expedition <<http://curia.europa.eu/juris/document/document.jsf?text=&docid=165109&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=231192>> accessed 24 October 2016.

We Care About Your Privacy

We and our 843 partners store and/or access information on a device, such as unique IDs in cookies to process personal data. You may accept or manage your choices by clicking below, including your right to object where legitimate interest is used, or at any time in the privacy policy page. These choices will be signaled to our partners and will not affect browsing data. [Privacy Policy](#)

We and our partners process data to provide:

Use precise geolocation data. Actively scan device characteristics for identification. Store and/or access information on a device. Personalised advertising and content, advertising and content measurement, audience research and services development.

[List of Partners \(vendors\)](#)

I Accept

Essential Only

Show Purposes

⁴⁹ A O'Neill, 'Opinion 2/13 on EU Accession to the ECHR: The CJEU as Humpty Dumpty,' 18 December 2014 <<https://eutopialaw.com/2014/12/18/opinion-213-on-eu-accession-to-the-echr-the-cjeu-as-humpty-dumpty/>> accessed 22 October 2016.

⁵⁰ A considerable body of jurisprudence has already developed in Canada with provincial and appeal courts applying the principles laid down in Vu and Fearon. For further details on these cases see the Canadian Legal Information Institute (Can LII) <<http://www.canlii.org/en/index.php>> accessed 25 October 2016.

⁵¹ Not to mention Riley v California. See above.

Log in via your institution

> Access through your institution

Log in to Taylor & Francis Online

> Log in

Restore content access

> Restore content access for purchases made as guest

There are no offers available at the current time.

Related Research

People also read

Recommended articles

Cited by

We Care About Your Privacy

We and our 843 partners store and/or access information on a device, such as unique IDs in cookies to process personal data. You may accept or manage your choices by clicking below, including your right to object where legitimate interest is used, or at any time in the privacy policy page. These choices will be signaled to our partners and will not affect browsing data. [Privacy Policy](#)

We and our partners process data to provide:

Use precise geolocation data. Actively scan device characteristics for identification. Store and/or access information on a device. Personalised advertising and content, advertising and content measurement, audience research and services development.

[List of Partners \(vendors\)](#)

I Accept 

Essential Only

Show Purposes



Information for

- Authors
- R&D professionals
- Editors
- Librarians
- Societies

Opportunities

- Reprints and e-prints
- Advertising solutions
- Accelerated publication
- Corporate access solutions

Open access

- Overview
- Open journals
- Open Select
- Dove Medical Press
- F1000Research

Help and information

- Help and contact
- Newsroom
- All journals
- Books

Keep up to date

Register to receive personalised research and resources by email

 Sign me up



We Care About Your Privacy

We and our 843 partners store and/or access information on a device, such as unique IDs in cookies to process personal data. You may accept or manage your choices by clicking below, including your right to object where legitimate interest is used, or at any time in the privacy policy page. These choices will be signaled to our partners and will not affect browsing data. [Privacy Policy](#)

We and our partners process data to provide:

Use precise geolocation data. Actively scan device characteristics for identification. Store and/or access information on a device. Personalised advertising and content, advertising and content measurement, audience research and services development.

[List of Partners \(vendors\)](#)

I Accept

Essential Only

Show Purposes